



East Highway 18—IHS Compound, P.O. Box 604, Pine Ridge, SD 57770

Phone: 605-867-5752

Fax: 605-867-5941

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**Request for Public Comment on Tribal IV-E Requirements
Lakota Oyate Wakanyeja Owicakiyapi
Oglala Sioux Tribe Chartered Child Protection Program
Oglala Sioux Tribe
Pine Ridge Indian Reservation, South Dakota**

Lakota Oyate Wakanyeja Owicakiyapi (LOWO) is the Tribal Chartered Child Program for the Oglala Sioux Tribe on the Pine Ridge Indian Reservation. In September 2007 the Oglala Sioux Tribe entered into its first IV-E Contract with the State of South Dakota, Department of Social Services, and Division of Child Protection Services and initially provided case management of children who were eligible for IV-E funding. In March 2008, LOWO assumed the full responsibility of Child Protection Services.

LOWO would like to acknowledge those individuals who have work effortlessly for Indian Tribes to access Title IV-E Funding directly and take this opportunity to thank the Region 8 ACF Office, Kevin Gomez, Ronnie Gordon, Marilyn Kinnerson and Tom Sullivan for advocating on behalf of Tribes in the Federal Region 8 service area.

1. Discussion: "considering that the secretary has no authority to waive title IV-E requirements, what, if any, provisions and clarifications related to the title IV-E program for directly-funded Indian tribes should be in regulations"

Case Plan

1.) Tribal Child Protection Programs and Indian Child Welfare Programs tend to have a high number of child welfare caseloads, lack of resources, lack of service providers on or immediately near Indian Reservations. Due to challenges such as these, will ACF consider allowing that a case plan be initiated within 90 days rather than the 60 day requirement?

*Oglala Sioux Tribe, Lakota Oyate Wakanyeja Owicakiyapi
Response to ACF IV-E Fostering Connection Tribal Consultation
Region VIII – Federal Building
April 17, 2009 – Denver Colorado*

2.) The State IV-E Plan speaks specifically to a designated case plan format, will Tribes be able to determine the format for the case plan or will they be guided to follow a State case plan format?

3.) In most Tribal and Indian Reservation settings, the grandparents and extended family serve in the capacity of the parental role, Federal IV-E requirements delegate that the Case Plan be developed with the parent or guardian. Since Indian family and extended family ascertain the parental role can Tribes develop the case plan with the family or extended family if it is determined upfront that the likelihood that the biological parent, guardian or custodian that the child was removed from for specific reasons not be reunited with the child(ren)?

4.) Return home date - again as mentioned previously there are limited resources, staff capacity and services, therefore could a waiver or extension on the projected return home date. In Indian Country not only are families experiencing substance abuse, mental health concerns, lack of parental skills some also experience historical trauma which prevents them from healing to the point where they are ready for the children to be returned home within the established time lines.

Close Proximity

1.) Due to children being enrolled or affiliated with other Tribes in the same State or neighboring State, will the requirement of "close proximity" to the home be changed to reflect the uniqueness of dual Tribal affiliation and connections that children have with family who reside in neighboring States or another Tribe that is located on the other side of the State?

2.) In the CFSR Review - one of the items that is assessed is "Educational Well-Being" - again close proximity is brought up in this item. Could the question above be considered in this item as well?

3.) Under the State/Tribal IV-E Contract between LOWO and State of South Dakota, the State recognizes LOWO's service area as the land base that was allocated to the Lakota in the 1868 Sioux Treaty, which entails land west of the Missouri River, the Black Hills, small portions of Nebraska, Wyoming. Again would there be consideration on how Tribes determine "close proximity" for their service areas?

Legal

1.) Pro Nun Tunc - After 12 months of the IV-E Tribal Plan, what are the bases for only allowing 12 months of Pro Nun Tunc orders? Instead of accepting these orders within a 12 month time frame could ACF re-evaluate this on an annual basis and continue to accept Pro Nun tunc orders? Will Tribe's be given Technical Assistance in a timely manner to come into compliance with this newly changed requirement?

Kinship Connections:

1.) What are the requirements for "Kinship" - under traditional customs child could be adopted ceremonially into a family? Will ACF accept this Tribal custom and approve of this kinship relatedness for the kinship guardianship assistance program? The current TANF relatedness policy is not applicable in Tribal communities.

Foster Parent Licensure

1.) From State to State the licensing requirements for the number of children placed in the home vary. Background checks are necessary but limits on number of children in the home that include the foster home's own children and may prevent a good and capable family from becoming licensed. What would be ACF's take on excluding Tribal Foster Parent's own biological or adopted children in the number of how many children can be the licensed foster parent home?

1.) Under the foster care maintenance foster parent reimbursements are allowed for services to the children, one of those being "travel to school". In Tribal communities and on Indian Reservations most family members do not have driver licenses or vehicle insurance, under State policy this is a requirement for foster parents. Will this same requirement be expected of Tribal programs?

Case File Reporting System

1.) Currently LOWO undergoes a quarterly IV-E review (informal) to ascertain IV-E compliance with the State/Tribal IV-E Contract. The State has designated a State staff person to perform these reviews. Will ACF designate a representative from the Regional Office to perform quarterly reviews or informal reviews to measure compliance requirements? If so, will the Tribe have the opportunity to designate an individual, agency or training center to perform this review?

2. Discussion: "Are guidelines above and beyond the provided pursuant to the Indian Child Welfare Act (ICWA) of 1978 needed to execute the transfer of placement and care responsibility of a title IV-E Indian child to an Indian tribe operating a title IV-E plan? If so, please provide suggestions."

1.) LOWO believes that the guidelines of ICWA are acceptable in order for Tribes to execute State transfer; placement and care responsibility of title IV-E children to a Tribal IV-E recipient for services.

2.) Most recently the State of South Dakota initiated practice that involves the IV-E funding following the child when the case has been transferred from the State to the Tribe. The IV-E funding hypothetical application process is initiated by the Tribal Child Protection Program and sent to the State for consideration. The acceptance rate has been approximately 100 % - In order to streamline this process after direct access, are discussions being held as to how ACF develop this process? Will Tribes be included in that discussion of the process? And if so at what level?

3. Discussion: "What specific information pertaining to title IV-E and title XIX should a State make available to an Indian tribe that seeks to gain placement and care responsibility over an Indian child?"

1.) Can ACF accept Tribal traditional healing services in lieu of mental health services or other services provided by licensed professionals?

2.) Applies to Discussion 2 as well - When a case is transferred to the Tribe, the medical services (Medicaid) ends and the Tribal Program or Relative completes an application for Medicaid services to be initiated with a different placement resource provider. Could ACF encourage States to look at continuing this service without closure of Medicaid services due to the child being transferred to the Tribe? As it stands, the State ends their Medicaid services to the child and due to either Tribal CPP capacity or challenges with relative's ability to apply for the service again; there are at times gaps in Medicaid service, which greatly impacts the child.

4. Discussion: "Should the third-party sources and in-kind limits on Tribal administrative and training costs remain consistent with

section 479B(c) (1) (D) of the Act? Please provide a rationale for this response"

1.) Considering the Tribes lack of resources & limited funding to operate at full effective capacity, will ACF consider diminishing these requirements?

2.) This section sets specific limits on the percentage of the Tribal share. Will ACF inform the Tribes what the percentage is and will this percentage be revised or changed? If so, will the Tribes have input as to what the percentage will be?

3.) Will ACF is setting established guidelines on "in-kind funding"? Will ACF set those guidelines, if so will Tribes have the opportunity to be part of that discussion or consultation as the time arises?

This concludes the responses on behalf of Lakota Oyate Wakanyeja Owicakiyapi. Thank you for the opportunity to speak on behalf of the Oglala Sioux Tribe.

Respectfully Submitted by:

Teresa R. Nieto,
Family Support Specialist Supervisor
Lakota Oyate Wakanyeja Owicakiyapi

cc: file